

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

ABM ENGINEERING SERVICES COMPANY

Employer

and

Case 7-RC-23327

**LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO**

Petitioner Local 324

and

**Case 7-RC-23332¹
(formerly 9-RC-18277)**

**LOCAL 18S, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO**

Petitioner Local 18S

APPEARANCES:

Timothy P. Reilly, Attorney, of Cincinnati, Ohio, for the Employer

William I. Fadel, Attorney, of Cleveland, Ohio, for Petitioner 18S

Amy Bachelder, Attorney, of Detroit, Michigan, for Petitioner Local 324

DECISION AND DIRECTION OF ELECTIONS

Upon petitions filed under Section 9(c) of the National Labor Relations Act, hearings were held before hearing officers of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ On February 12, 2010, the General Counsel transferred Case 9-RC-18277 from Region 9 to Region 7 denoted as Case 7-RC-23332. On February 18, the Regional Director for Region 7 issued an Order Consolidating Cases 7-RC-23332 and 7-RC-23327, and reopening the record in Case 7-RC-23332 (formerly 9-RC-18277).

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officers' rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

The Employer provides engineering maintenance services for office buildings, schools, and malls nationwide, including for branches and stand-alone ATMs for JPMorgan Chase.³ On November 1, 2009, JPMorgan Chase awarded the Employer the maintenance contract for its Midwest territory, consisting of three administrative regions: the Illinois/Wisconsin region, the Michigan/northern Ohio region ("Northern region"), and the southern Ohio, West Virginia, Indiana, Kentucky, and western Michigan region ("Southern region").⁴ The portion of western Michigan included in the Southern region stretches from the Indiana-Michigan border up to Kalamazoo, Michigan, and includes about 20 facilities.

Petitioner Local 324 seeks to represent the Employer's full-time and regular part-time mobile route engineers (MREs) servicing retail locations of JPMorgan Chase in the state of Michigan, excluding employees at 9000 Haggerty Rd., Belleville, Michigan, and employees currently represented by a labor organization. Petitioner Local 18S seeks to represent all MREs servicing JP Morgan Chase retail locations in Ohio and West Virginia, excluding all HVAC technicians, building technicians, and stationary engineers/operators servicing JPMorgan Chase facilities in four Columbus, Ohio

² All parties waived the right to file briefs.

³ No party alleges that the Employer and JPMorgan Chase are joint employers.

⁴ MREs in the Employer's Illinois/Wisconsin region are represented by Local 399, International Union of Operating Engineers, AFL-CIO. Prior to the hearing, the hearing officer contacted Local 399 and advised it of the hearing and asked if it wished to intervene. Local 399 declined. The hearing officer also left a message with Local 85, International Union of Operating Engineers, AFL-CIO, out of Drexel, PA, advising of the hearing. No response was received. The record does not reflect any prior labor history for the Northern or Southern regions, the regions involved herein.

locations.⁵ Alternatively, Petitioner Local 18S seeks to represent two units: a northern Ohio unit and a southern Ohio/West Virginia unit.

The Employer argues that the appropriate unit would be either all of the MREs in the Midwest region who are not already represented, or, alternatively, two units reflecting the Employer's administrative regions: Michigan/Northern Ohio, and Southern Ohio, West Virginia, Kentucky, and Indiana.

After considering all the evidence in the record, including the contact and interchange of employees, common supervision, and geographic proximity, I find that a unit of MREs in Michigan, excluding the mobile route technician servicing JPMorgan Chase facilities between the Michigan/Indiana border and Kalamazoo (Kalamazoo MRE), to be appropriate. I also find, based on the contact between employees and common supervision, that a unit of MREs servicing JPMorgan Chase Ohio facilities in the Employer's Northern region to be appropriate. Finally, I find that a unit of all MREs servicing JPMorgan Chase facilities in the Employer's Southern Ohio, West Virginia, Kentucky, and Indiana administrative region (including the Kalamazoo MRE) to be appropriate, based on common supervision and contact between employees.

Employer's Operations

To be consistent with JPMorgan Chase's territorial divisions, the Employer divided the Midwest territory into three administrative regions: the Illinois/Wisconsin region, Northern region, and Southern region.

Eighteen mobile route engineers (MREs) are employed in the Northern region: eleven in Michigan, and seven in northern Ohio. In Michigan, nine are employed in the Greater Detroit area, and two in the Greater Grand Rapids area. In Northern Ohio, five MREs work in the Greater Cleveland/Akron area, and two work in the Greater Columbus area.

Sixteen MREs are employed in the Southern region: seven in Indiana, three in Kentucky, three in southern Ohio, and three in West Virginia and Ohio. Of the MREs working in Indiana, one works in the Northern Indiana area, which includes Western Michigan up to Kalamazoo and western Ohio; two work in the greater Fort Wayne, Indiana, area and in western Ohio (in the Southern region); and four work in the greater Indianapolis area. Of the MREs working in Kentucky, three work in the greater Louisville/Lexington area, and one works primarily in Ohio/West Virginia, but works about one day a month in Kentucky. In southern Ohio, three MREs work in the greater

⁵ On March 8, 2010, a certification of representative issued in Case 9-RC-18276 designating Petitioner Local 18S as the exclusive collective bargaining representative of these employees located at 1111 Polaris Parkway, Columbus, Ohio; 3415 Vision Drive, Columbus, Ohio; 340 Cleveland Avenue, Westerville, Ohio; and 800 Brooks Edge, Westerville, Ohio.

Cincinnati/ Dayton area (with one going down to Kentucky once a month), and three work in the greater West Virginia/Ohio area.

Approximately 300 JPMorgan Chase facilities are located in Michigan, about 200 are located in northern Ohio, and approximately 450 are in the Southern region.

Supervisory Hierarchy⁶ and Labor Relations

Vice President Allen Persaud oversees the JPMorgan Chase account nationwide. National operations manager Paul Dow oversees the Midwest territory, as well as other territories not at issue in this proceeding, and reports to Persaud. Reporting to Dow are operations managers Charles Fitzgerald and Harold Baker. Fitzgerald supervises the Northern Region. Mobile route supervisors Kenneth Jim Nowry and Tom Trayte report to Fitzgerald. Nowry is located in Waterford, Michigan, and supervises all employees who work in Michigan, except for one employee who services about 20 sites from the Indiana-Michigan border, up to Kalamazoo, Michigan (the Kalamazoo employee), who is supervised by James Cooley. Trayte is located in Westlake, Ohio, and supervises only employees in northern Ohio. The Southern region is supervised by operations manager Harold Baker. Reporting to Baker are mobile route supervisors James Cooley and Robert DeVore, Jr. Cooley supervises MREs in northern and central Indiana, western Michigan, and western Ohio. DeVore supervises MREs in southern Ohio, Kentucky, West Virginia, and southern Indiana.

The corporate human resources representative is Stacia Edmunds, located in New York. An administrator in Chicago collects all payroll data for the Midwest region, and passes it on to Elaine Lissing, the primary corporate payroll representative in California. Personnel records are maintained in both New York and with the operations manager. The paperwork collected upon hiring, what was referred to by an Employer witness as the hiring package, is maintained in New York, while documents such as performance evaluations and disciplines are maintained in New York and locally with the operations managers.

Wages, benefits, and working conditions of MREs

MREs conduct equipment inspections, emergency repairs, preventative maintenance on equipment, and general maintenance at JPMorgan Chase facilities and standalone ATMs. Job duties are virtually identical for all MREs in both regions, with the exception that some MREs have their universal HVAC license and, therefore, can purchase refrigerant, and some cannot. The MREs' job duties are outlined in the contract

⁶ Petitioner Local 18S and the Employer stipulated and I find that the following are supervisors within the meaning of Section 2(11) of the Act: Harold Baker, James Cooley, Robert DeVore, Jr., Charles Fitzgerald, Thomas Trayte, and Kenneth Nowry. Petitioner Local 324 stipulated that Thomas Trayte and Kenneth Nowry are supervisors within the meaning of Section 2(11) of the Act.

between the Employer and JPMorgan Chase. Each technician is responsible for approximately 20 - 30 JPMorgan Chase facilities and stand-alone ATMs within a specific geographic area. The mobile route supervisors assign MREs to their individual routes.

All MREs carry BlackBerries and cellular phones issued by JPMorgan Chase. They are supplied with trucks by the Employer. All trucks are similarly equipped, except that if an employee does not perform HVAC work, he will not have HVAC equipment on his truck. The Employer supplies tools and safety equipment to the MREs, and the tools are monitored through periodic truck inspections conducted by the mobile route supervisors.

When a facility needs maintenance services, a work order is communicated to the MREs via their BlackBerries. If the request is coming out of a particular building in the field, it will be dispatched through JPMorgan Chase's call center, which is operated by JPMorgan Chase. The call center enters the work order, and it is dispatched to the technician assigned to the facility. When the technician completes his work, he closes the work order out through the call center system.

Some MREs are assigned to areas that cross state lines. For example, Todd Rynders' and Justin Talbot's areas encompass portions of Fort Wayne, Indiana, and areas in western Ohio. Kevin Fasnacht works in West Virginia and in Kentucky. Richard May performs work in western Michigan, Indiana, and western Ohio.

MREs order supplies through Otto Herrmann, a New York-based company that has a contract with JPChase Morgan to process procurement of equipment and supplies for maintenance services, nationwide. When supplies are needed for a specific job, the MRE contacts Otto Herrmann which provides a purchase order number to the MRE to obtain the requisite supplies through Home Depot or another purveyor. JPMorgan Chase provides a credit card for use at Home Depot in situations when a purchase order cannot be timely obtained (as when emergency service arises on a weekend or after hours), and the MRE is then responsible for calling in the purchase to Otto Herrmann the next business day. MREs also carry Employer-provided credit cards for Wheels, the company that maintains the Employer's fleet vehicles. The cards are used for purchasing gasoline, oil, and other necessary automotive supplies and maintenance.

All MREs are paid biweekly. The wage range for MREs in Ohio and West Virginia is between \$14.89 and \$24.00. The wage range for MREs in Michigan is \$17.96 to \$24.45.⁷ MREs fill out time sheets which are faxed or sent by interoffice mail to their mobile route supervisors. All MREs are paid hourly, and overtime is calculated in the same manner for all employees. In order to work overtime, MREs need the approval of the JPMorgan Chase facility manager for whom the overtime is performed.

⁷ The record does not contain wage information for MREs working in Indiana or Kentucky.

Educational background and licensing vary from technician to technician. Some have high school vocational training, and others have attended trade union schools or air conditioning programs; some have universal HVAC licenses, trade licenses, or college degrees.

An employee handbook applies to all non-unionized employees, corporate-wide. All MREs have the same attendance and time-off policies, medical benefits options, a 401(k) savings plan, and an employee stock purchase plan. They also have the same work rules and disciplinary policy.

The Employer is in the process of issuing uniforms, which consist of dark pants and a polo shirt with “Engineering Services” written on the shirt. All MREs will eventually be issued these uniforms.

Some employees have office space at JPMorgan Chase branches, while others do not. For example, MRE Kurt Walworth uses office and equipment space at a branch in Garden City, Michigan, and MRE Dwayne LaFleur will occasionally also use that same office space. MREs Christopher Linn and Phil Lacy use office space at a branch in Flint, Michigan.

MREs work 8:00 a.m. to 5:00 p.m.. If they need to alter their hours, they call their mobile route supervisors, who notify the operations manager. If an employee needs time off, the mobile route supervisor contacts the call center so that the technician’s calls can be directed to another technician.

Employees receive the same benefits in both regions. The mobile route supervisors perform evaluations for the MREs who report to them, and the evaluations are reviewed by the operations manager. Disciplines can be generated by mobile route supervisors or the operations manager, but must be signed off by the operations manager.

Interchange

The Employer does not have MREs fill in for each other or otherwise work outside of their region, because the Employer cannot bill JPMorgan Chase across regions. MREs from Michigan do not fill in for MREs in northern Ohio, or vice versa.

The MREs communicate with each other via cell phone. They communicate with MREs within their own region if they need physical or troubleshooting assistance. The record shows no examples of MREs from Michigan calling or working together with MREs from northern Ohio, or MREs from southern Ohio calling or working with MREs from northern Ohio.

Meetings are held via telephone conference call. Most telephone meetings involve only the mobile route supervisor and the MREs who report to him, although there have been one or two regional telephone meetings.

There is no evidence of interaction between MREs in the Northern and Southern regions. Employees from southern Ohio and West Virginia consult and work together, however, there is no evidence that any other employees work with MREs across state lines. There is no record evidence that Ohio employees in the southern region work with or consult with Ohio employees in the northern region, or that the Kalamazoo MRE works with Michigan MREs.

Analysis

It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. ***Overnight Transportation Co.***, 322 NLRB 723, 723 (1996); ***General Instrument Corp. v. NLRB***, 319 F.2d 420, 422-23 (4th Cir. 1963), *cert. denied*, 375 U.S. 966 (1964). The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. ***Transerv Systems***, 311 NLRB 766 (1993); ***Morand Brothers Beverage Co.***, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951).

The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry. ***Bartlett Collins Co.***, 334 NLRB 484, 484 (2001). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. ***Boeing Co.***, 337 NLRB 152, 153 (2001). See, e.g., ***Overnite Transportation Co.***, 331 NLRB 662, 663 (2000); ***NLRB v. Lake County Assn. for the Retarded***, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

For a unit to be appropriate, the key question is whether the employees in that unit share a sufficient community of interest. Community-of-interest factors include: (a) similarity of employee skills, qualifications, and training; (b) degree of functional integration; (c) frequency of contact and interchange among employees; (d) commonality of supervision; (e) similarity in benefits, hours, and other terms and conditions of employment; and (f) bargaining history. ***Ore-Ida Foods, Inc.***, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F.3d 328 (7th Cir. 1995); ***Kalamazoo Paper Box Corp.***, 136 NLRB 134, 137 (1962). A union's desire is always a relevant, but not dispositive, consideration. ***E.H. Koester Bakery & Co.***, 136 NLRB 1006 (1962).

The proposed Michigan unit

Petitioner Local 324 seeks to represent a unit of all MREs in the state of Michigan. The MREs have almost identical skills, duties, and working conditions. All but one MRE (the Kalamazoo MRE) are supervised by the same mobile route supervisor. They have contact with other Michigan MREs, and there is no evidence, other than infrequent regional telephone meetings, that they have contact with MREs from northern Ohio or anywhere else. Under these circumstances, I find that the MREs in Michigan, with the exclusion of the Kalamazoo MRE, have a sufficient community of interest to comprise an appropriate bargaining unit. In so finding, I note that the Act does not require the unit to be the most appropriate or the only appropriate unit for bargaining. ***Transerv Systems***, *supra*.

I find the Kalamazoo MRE, however, does not share a sufficient community of interest with the rest of the Michigan MREs. He is supervised by a different mobile route supervisor, and managed by a different operations manager than the other Michigan MREs. Further, the record shows that he also services facilities in Indiana and western Ohio. Accordingly, I find that the Kalamazoo MRE should be excluded from the Michigan unit.

The proposed Ohio unit

Petitioner Local 18S seeks to represent all MREs in Ohio and West Virginia, excluding the HVAC technicians, building technicians and stationary engineers/operators servicing four Columbus facilities noted above. Alternatively, Petitioner Local 18S proposes two units: one comprised of northern Ohio MREs and one comprised of southern Ohio/West Virginia MREs.

The MREs in northern Ohio share virtually identical skills, duties, and similar working conditions with the MREs in southern Ohio/West Virginia. They do not, however, share common supervision. The two groups report to different mobile route supervisors and different operations managers. There is no evidence that any contact or interchange has occurred between the northern Ohio and southern Ohio/West Virginia MREs. For these reasons, I conclude that there is not a sufficient community of interest between the MREs in northern Ohio and southern Ohio to find a unit of all MREs in Ohio and West Virginia appropriate.

Next, I consider whether two units, one of northern Ohio MREs and one of southern Ohio/West Virginia MREs, are appropriate. The proposed northern Ohio unit is consistent with the Employer's administrative territory supervised by mobile route supervisor Thomas Trayte. The northern Ohio MREs, in addition to possessing common skills, job duties, and working conditions, have common supervision and some contact with each other. The northern Ohio unit is consistent with the Employer's administrative

grouping of employees in northern Ohio reporting to Trayte. See *Acme Markets*, 328 NLRB 1208 (1999). Accordingly, I find that the northern Ohio MREs possess a sufficient community of interest to comprise a unit appropriate for collective bargaining.

The southern Ohio/West Virginia unit, however, as proposed, carves out specific MREs from the Employer's administrative Southern region. The proposed unit includes several MREs who work across state lines. The Board does not permit the arbitrary or artificial grouping of employees. *Turner Industries Group, LLC*, 349 NLRB 428, 430 (2007); *Moore Business Forms, Inc.*, 204 NLRB 552, 553 (1973). Unlike in the Northern region, neither of the mobile route supervisors in the Southern region oversees MREs in an area coterminous with a state, and none of the five states within the Southern region has separate supervision at the state level. Thus, there is no administrative structure corresponding to the southern Ohio/West Virginia unit proposed by Petitioner 18S. In addition, the evidence fails to establish that the southern Ohio/West Virginia MREs have an identity separate and distinct from the community of interest they share with other employees of the Employer's Southern region. See, e.g., *Laboratory Corporation of American Holdings*, 341 NLRB 1079, 1082 (2004); *Acme Markets*, supra, 1029. Under these circumstances, this unit proposed by Petitioner 18S is inappropriate. *ibid*.

Petitioner 18S indicated at hearing that it did not foreclose its willingness to participate in an election in a unit other than its petitioned-for unit, or alternative units. Thus, it is appropriate to consider alternative units. *Ibid*. In doing so, I find that the same considerations which render the alternatively proposed southern Ohio/West Virginia unit inappropriate, support the Employer's contention that a unit comprised of all MREs in the Southern Region is appropriate. *Ibid*.

Conclusion

5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁸

Case 7-RC-23327

All full-time and regular part time mobile route engineers (MREs) servicing JPMorgan Chase retail facilities in the state of Michigan,

⁸ Because two units were found appropriate herein in Case 7-RC-23332, Petitioner Local 18S is accorded a period of 14 days from the date of this Decision and Direction of Elections in which to submit to the undersigned an additional showing of interest for each unit. In the event Petitioner Local 18S does not wish to proceed to an election in either or both of the units, it may withdraw its interest in respect to the particular unit, without prejudice, by notice to the undersigned within 7 days from the date of this Decision and Direction of Elections.

excluding all janitors/custodians, professional employees, and guards and supervisors as defined in the Act, and employees at 9000 Haggerty Rd., Belleville, Michigan, and the MREs who service facilities from the Indiana/Michigan border up to Kalamazoo, and employees currently represented by any labor organization.

Case 7-RC-23332 (formerly 9-RC-18277)

UNIT A

All full-time and regular part time mobile route engineers (MREs) performing work in northern Ohio in the greater Cleveland/Akron area and the greater Columbus area for JP Morgan Chase retail facilities, but excluding all HVAC technicians, building technicians, and stationary engineers/operators servicing JPMorgan Chase facilities located at 1111 Polaris Parkway, Columbus, Ohio; 3415 Vision Drive, Columbus, Ohio; 340 Cleveland Avenue, Westerville, Ohio; 800 Brooks Edge, Westerville, Ohio; all janitors/custodians, chief engineers, office clericals, and all professional employees, and guards, and supervisors as defined in the Act.

UNIT B

All full-time and regular part time mobile route engineers (MREs) performing work in southern Ohio in the greater Cincinnati/Dayton area, West Virginia, Indiana, Kentucky, and western Michigan from the Indiana/Michigan border up to Kalamazoo, for JPMorgan Chase retail facilities; but excluding all janitors/custodians, chief engineers, office clericals, and all professional employees, and guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 26th day of March 2010.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct a secret ballot election among the employees in each of the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by:

**Case 7-RC-23327 LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO**

**Case 7-RC-23332, LOCAL 18S, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO**

The date, time and place of the elections will be specified in the notices of election that the Board's Regional Offices will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have quit or been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Detroit Regional Office an election eligibility list for each unit, containing the full names and addresses of all the eligible voters. ***North Macon Health Care Facility***, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). I shall make the list available to all parties to the election in Case 7-RC-23327. With regard to Case 7-RC-23332, the lists may initially be used by me to assist in determining an adequate showing of interest for unit A and unit B. I shall, in turn, make the lists available to all parties to each of the elections, only after I shall have determined that an adequate showing of interest among the employees in the units found appropriate has been established.

To be timely filed, the lists must be received in the Detroit Regional Office on or before **April 2, 2010**. No extension of time to file the lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the lists. Failure to comply with this requirement will be grounds for setting aside the elections whenever proper objections are filed. The lists may be submitted to the Detroit Regional Office by electronic filing through the Agency website, **www.nlr.gov**,⁵ by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the lists will continue to be placed on the sending party.

Since the lists will be made available to all parties to the election, please furnish a total of **two** copies of each list, unless the lists are submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office of Region 7, Detroit.

C. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have

⁵ To file the list electronically, go to **www.nlr.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. The user then completes a form with information such as the case name and number, attaches the document containing the request for review, and clicks the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **www.nlr.gov**.

commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term “working day” shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.69 of the Board’s Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **April 9, 2010**. The request may be filed electronically through **E-Gov** on the Board’s website, **www.nlrb.gov**,⁶ but may **not** be filed by facsimile.

⁶ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.

To file the request for review electronically, go to **www.nlrb.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office’s initial correspondence on this matter and is also located under **E-Gov** on the Board’s web site, **www.nlrb.gov**.